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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,780	08/18/2003	Judith K. Laffoon	3250	3687

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Sean T. Bradley  
Chase Law Firm, L.C.  
Suite 130  
4400 College Boulevard  
Overland Park, KS 66211

EXAMINER

ALIMENTI, SUSAN C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/642,780

Applicant(s)

LAFFOON, JUDITH K.

Examiner

Susan C. Alimenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 4, 6, 7 and 10-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiesel (US 6,209,134), in view of Schellenbach (US 6,450,126).
3. Schiesel discloses the claimed invention as cited in claims 1, 3, 4, 7, 11-12 and 15-17 except there 1.) is only one pad 24 located on a top surface of the garment and 2.) said pad 24 *could be interpreted* as not being generally cylindrical.

Regarding the aforementioned claims and item #1 above, Schiesel discloses an animal care garment 10 comprising a front panel 20, a back panel 22, a neck opening there between 38, a means for receiving food or waste 30, means for carrying small animals 28, 30 and a pad 24 serving as a perch area for a variety of birds. Schellenbach discloses an animal care garment in the same field of invention also comprising a similar shoulder perch 52. Schellenbach teaches that plurality of perches could be utilized and placed parallel to one another providing versatility for the bird as it changes position. It is also taught that the size may vary to accommodate different bird grip sizes, therefore it is taught that a plurality of smaller perches could be placed thereon the shoulder area (Schellenbach, col.6, lns.31-49). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add another perch area to Schiesel's device in order to provide more room for the bird to change its position.

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Regarding claim 7, when the perches are placed alongside one another as taught by Schellenbach, said perches will inherently create a walled channel there between.

Regarding the aforementioned claims and item #2 above, Schiesel discloses the claimed invention except pad 24 could be interpreted as not being generally cylindrical. It is noted that a generally cylindrical perch is a well-known shape in the art as shown by Schelllenbach's shoulder perch 52. Furthermore it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the perch generally cylindrical since it has been held that there is no invention in merely changing the shape or form of an article without changing its function except in a design patent. Eskimo Pie Corp. v. Levous et al., 3 USPQ 23.

4. Regarding claims 2, 13 and 14, and the above discussion Schiesel, as modified, discloses the claimed invention except the means for attaching an object to the garment 36A-C, is not positively disclosed as extending from one of said top surfaces. Schellener, however, shows object 60 extending from a top surface 20. Furthermore it is noted that it would have been obvious to one having ordinary skill in the art at the time the invention was made to attach an object to the top surface of Schiesel's garment since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

5. Finally regarding claims 6 and 10, Schiesel, as modified, discloses the claimed invention except the preferred material of pads 24 is not positively stated, it is only stated that they provide a grip for the animal and padding for the user. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a polymer foam to make pads 24, since the Examiner takes Official Notice that polymer foam is commonly used as a padding

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material in the art and the selection of this material would be within the level of ordinary skill in the art.

6. Claims 5 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiesel in view of Schellenbach as applied to claims 1-4, 6, 7 and 10-17 above, and further in view of Garay et al. (US 5,315,957).

Schiesel, as modified discloses the claimed invention except the preferred material of perch pad 24 is not positively stated to be made of rope. Garay et al. discloses a perch made from a rope material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Schiesel's garment by making the perch pad 24 with a rope and replacing it inside shoulder region 26, as it is a resilient durable material suitable for the intended purposes.

Regarding claim 9, it is noted that Garay's rope is not synthetic but instead a natural material, however it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a synthetic material instead of a natural in order to increase the life and durability of said perch.

### ***Response to Arguments***

7. Applicant's arguments filed 14 June 2004 have been fully considered but they are not persuasive. Applicant argues that Schiesel, in view of Schellenbach, does not make obvious the claimed invention for various reasons. First applicant contends that Schiesel "does not teach generally cylindrical pads" (Arguments 6/14/04, p.2, ¶ 2), however the examiner respectfully disagrees and points out the nature of such a broad limitation. When an object is described as

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“generally cylindrical” this does not require the object to be cylindrical, instead merely *generally* in that shape and is left to the observer’s interpretation. Schiesel’s vest is shown at a side view in Figure 3, and the cross section of pad 24 is more apparent. Here we see that said pad 24 is *generally cylindrical*, however even if one were to argue with such an interpretation Schellenbach is included to provide a more definitive teaching of a cylindrical perch shape.

The applicant further implies that because Schellenbach’s device uses a wooden dowel he is teaching away from a pad like perch. This argument is moot since Schellenbach is not provided to teach perch material. On the contrary, Schellenbach is included to teach a known perch shape and the method of using multiple perches in order to provide more mobility to the bird. More specifically, Schellenbach teaches placing multiple cylindrical perches in a parallel relationship in order to form a ladder. Applicant then argues that the Schellenbach’s reference is insufficient because his intent was different the that of the present invention. This is irrelevant because a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In response to applicant’s arguments that Schiesel’s pockets 30 are not meant to perform the functions as claimed, the Examiner respectfully disagrees. An example of such claim language can be found in claim 4, lines 12-14; “an outer wall spaced away from the outer, lower surface of at least one of said panels, said wall to define an open-topped receptacle for receiving debris falling from said shoulder apex”. Applicant is reminded that the phrase “*for receiving*

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*debris... apex*”, is purely functional subject matter that the prior art must only be capable of performing. Here it is clear that Schiesel’s pocket 30 is capable of catching or receiving debris that might fall from the top of the vest.

Finally, in response to Applicant’s arguments that in combination Schiesel, Schellenbach and Garay do not disclose or teach a pad formed of fabric covered rope, the examiner again respectfully disagrees. Schiesel discloses a perch pad and as avoids narrowing the scope of the invention by not specifying exactly what the perch is made of. Instead he merely states its prime function, which is to give the bird something to hold onto and to provide enough padding to protect the user. The Garay reference is included in the above rejection simply to further define the state of the art with regard to bird perches. Garay teaches the use of a synthetic rope perch, which the examiner maintains is a known obvious equivalent structure, providing the same function. Placing the rope inside of the material shown at shoulder apex 26 (Schiesel, Figure3) would create a fabric covered rope perch.

In conclusion, with regard to the above discussion and the reasons listed in the above rejections, the examiner maintain the rejections of claims 4-21

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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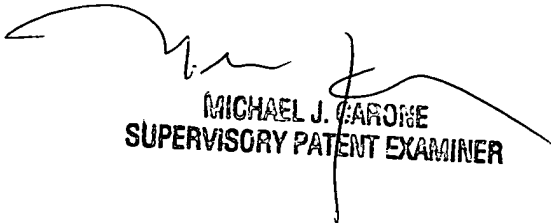
MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 703-306-0360. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

10 Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA



MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER